

How big is too big? The testy issue of

The fact that there are large tracts of unused land housing squatters points to a system that needs to change so as to address the demands of a growing population

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One of the many stories grabbing headlines locally is that of the 940 acres of private land in Likoni legally owned by Mr Evanson Kamau Waitiki.

Mr Waitiki acquired the land 37 years ago at the youthful age of 30, but today more than 120,000 people, who have put up permanent house, places of worship and schools have encroached on it.

Hundreds of kilometres away in Nairobi, the storm is yet to settle over the grabbing of a 134-acre piece of prime land in Karen earlier this year, which, according to Mr Paul Wambua, the chairman of the National Institution of Surveyors, "should present a definite cause for worry".

Such land grabs demonstrate the distinctive and insatiable appetite for land by many in Kenya, a hunger that continues to not only drive individuals to use any means possible to get hold of the precious commodity, but also land prices out of the reach of most Kenyans.

"The accusations and counter-accusations over the Karen land notwithstanding, its large size and prime location was the main motivation behind the grabbing," says Mr Wambua.

The vast land had been left 'idle' over a long period of time for reasons best known to the owner, and this might have attracted interest from enterprising Kenyans, who seemingly had better ideas on how to put it to better use, says Mr Wambua.

"Such happenings do not serve to instill confidence in the institutions that Kenyans have entrusted to facilitate land transactions and safeguard the sanctity of title deeds. In any case, they are already scaring away potential investors in land and property in Kenya," he adds.

National land policy

The debate on land sizes started during formulation of the national land policy, with the concern that there was excessive and uneconomical fragmentation of land.

A sizeable number of people also owned large tracts of idle land, and the referendum campaigns of 2010 brought the issue to the forefront with proponents and opponents of the draft Constitution using the proposal to limit land sizes to woo voters.

Although the issue is now water under the bridge as far as the Constitution is concerned, the debate on land sizes rages

on, attracting a lot of interest across a section of the general public.

The proposal to regulate land sizes in the National Land Policy was meant to encourage equity and to offload the excessive land that was not put into productive use to the market for use by the citizens.

"This same spirit was captured during the drafting of Section 68 of the Constitution, which mandated Parliament to enact a legislation to prescribe minimum and maximum land," says Mr Wambua.

The issue today is not only on maximum land holding, but also on land that has been fragmented into small and uneconomical sizes as owners seek to maximise returns from their properties.

"These two scenarios, in my opinion, combine to further compound the problem of landlessness, joblessness, food insecurity, as well as land-related conflicts in this country, and should therefore trigger further debate among the policy makers," says Mr Wambua.

Piecemeal efforts

There have been piecemeal efforts by County governments to regulate land sizes within their jurisdictions, under the Urban Areas and Cities Act of 2012, which gives County governments



powers to regulate minimum land sub-divisions.

The Physical Planning Act, Cap 286 of 1996 — which is yet to be repealed — also gives county governments powers to regulate minimum land sizes.

Through these pieces of legislation, county governments can formulate zoning regulations

for the various areas under their jurisdiction. After all, they are the same laws that county governments have been using to ban land sub-division and conversion of land uses.

Pursuant to Section 68 of the Constitution, Parliament in 2012 enacted the Land Act, 2012, which mandated the Cabinet

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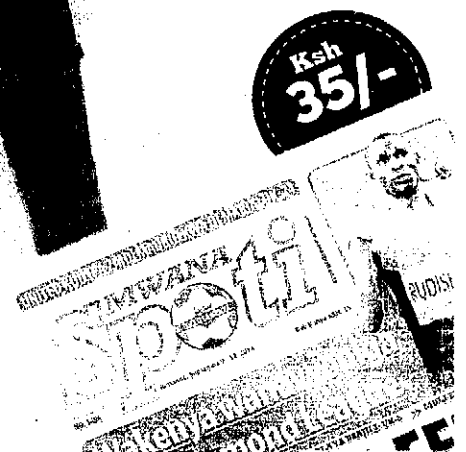


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WACHA SPOTI
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Wanaspoti wamechagua kipenzi chao, Usikose habari moto moto, matokeo ya ligi, makala spesheli, maoni na umbua wote wa michezo kupitia gazeti la kipeeke la spoti nchini.
PATA NAKALA YAKO KILA JUMANNE NA JUMAMOSI



land sizes and how laws can solve it



PHOTO FILE
Squatters claiming ownership of a 220-acre piece of land in the Mijengo area of Kisumu in the early January this year.

Secretary, Ministry of Lands, Housing and Urban Development to commission a scientific study to determine the economic viability of the minimum and maximum acreage in respect to private land for various zones in the country within one year.

line. The laxity to operationalise the provisions of the Act can be partly attributed to the dispute and incessant squabbles between the Ministry of Lands and the National Land Commission," says Mr Wambua.

He adds that there has clearly been a lack of goodwill to carry out the same, even though "it could also be due to the fact that the subject matter is very sensitive and requires some caution".

Meanwhile, counties have been exercising the provision of the Urban Areas and Cities Act, 2012 and the Physical Planning Act, 1996, without clear justification.

"These activities have been challenged in the corridors of justice by land owners as well as other stakeholders in the land sector.

"The stakeholders' main point of concern has not only been about the effects such restriction would have on their investment, but also the legality of the directives.

"This, therefore, is an indication that a move to regulate land sizes requires in-depth consultation among all the stakeholders," says Mr Wambua.

The Institution of Surveyors of Kenya commissioned a study in 2012 that revealed that land

use — such as where the land is designated as commercial, residential or industrial — tenure systems, household sizes, gender, socio-cultural practices, ecology, and the level of infrastructure were the main issues that needed to be considered when coming up with appropriate land sizes in Kenya.

According to Mr Wambua, in the interest of food security, landlessness, land-related conflicts, and

economic growth, the relevant public agencies should take the lead to come up with a policy that would address the issue of minimum and maximum land sizes in Kenya.

As the country waits for the government to come up with the regulations to govern the maximum and minimum land ownership, people will keep on buying land so long as they can afford it, as currently there is no law or regulation restricting maximum and minimum sizes of land.

Regulating land sizes has not only been a challenge in Kenya, but also in other developed democracies, though they somehow manage to circumvent such challenges.

Sliding scale zoning

In some places in the US where the minimum land size permitted in some areas is 40 acres, for instance, the owner can only build one dwelling unit for every 40 acres.

The US also uses the sliding scale zoning technique, which provides more building rights to smaller units because they are not suited for agricultural farming activities like large farms.

"The requirement is that the minimum size should bring economic returns to the farmer,

and this resulted to five- to 20-acre parcels of otherwise productive land which could now support both full and part time farmers," adds Mr Wambua.

Closer home, the Institution of Surveyors research found out that Kenyans would welcome restrictions on minimum land sizes.

Two acres was the preferred minimum acreage in Kisumu from a response of 60 people, 15 acres in Trans-Nzoia from 90 respondents, and 200 acres in Kajiado, also from 90 respondents. However, proper determination of minimum and maximum land holding requires comprehensive research as well as consultation.

The above factors will also need to be considered to inform better legislation devoid of impunity, the research indicated.

"Though having minimum and maximum land holding may assist in discouraging hoarding, it will not necessarily reduce the squatter problem.

"The issue of squatter settlement is multi-faceted and may require other interventions, and the public land allocation system, which should prioritise on squatter settlements, should be one of them," concludes Mr Wambua.

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News such as the grabbing of the Karen land should today present a definite cause for worry, not because they are unheard of, but because they come hot on the heels of land reforms in the country,"

Paul Wambua, National Chairman, Institution of Surveyors of Kenya



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